

UNITED STATES OF AMERICA
BEFORE THE NATIONAL ~~LABOR~~ RELATIONS BOARD

GREATER KANSAS CITY ROOFING

and

Case 17-CA-11502

UNITED UNION OF ROOFERS, WATERPROOFERS
AND ALLIED WORKERS LOCAL NO. 20, AFL--CIO

DECISION AND ORDER

Upon a charge filed on 2 March 1983, by United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL--CIO, herein called the Union, and duly served on Greater Kansas City Roofing,¹ herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on 13 April 1983, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that the Union has been the exclusive collective-bargaining agent of Respondent's employees in an appropriate unit since 25 September 1981 and since said date

¹ We note that the General Counsel attempted to serve the charge on Respondent by certified mail on 2 March 1983, but that the charge was returned unclaimed to the General Counsel. Subsequently, however, the General Counsel served both the charge and complaint on Respondent by certified mail on 19 May 1983.

the Union has been recognized as such representative. The complaint further alleges that such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period 1 June 1981 to 31 May 1984. The complaint alleges that pursuant to the collective-bargaining agreement Respondent is required, with authorization, to check off dues and initiation fees and remit them to the Union, and to make payments to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan. The complaint further alleges that since on or about 2 September 1982 Respondent has failed and refused, and continues to fail and refuse to make payments to said plans and programs. The complaint also alleges that since on or about 2 September 1982 Respondent has failed and refused, and continues to fail and refuse to adhere to authorization for the check off of dues and initiation fees and remittance of them to the Union. The complaint alleges that by such acts and conduct Respondent has unilaterally changed or modified the terms and conditions of employment of its employees. The complaint alleges that Respondent, by the foregoing conduct, has violated Section 8(a)(5) and (1) of the Act. Respondent, although duly served, failed to file an answer to the complaint.

Thereafter, on 16 June 1983, counsel for the General Counsel filed directly with the Board motions to Transfer Proceeding to the Board and for Summary Judgment, together with exhibits, based on Respondent's failure to file an answer to the complaint. Subsequently, on 22 June 1983, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion for summary judgment should not be granted. Respondent, although duly served, failed to file a response to the

Notice to Show Cause, and thus the allegations of the Motion for Summary Judgment stand uncontroverted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that unless an answer is filed within 10 days of service thereof, all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board. According to the Motion for Summary Judgment, the Regional Director, on 19 May 1983, issued and served the complaint on Respondent by certified mail. Respondent failed to file an answer to the complaint. On 6 June 1983, counsel for the General Counsel then sent a letter by certified mail to Respondent requesting an answer to the complaint by 14 June 1983, and advising it that, unless an answer to the complaint was filed by that date, she would consider seeking summary judgment in the proceeding.

As Respondent failed to file an answer within 10 days from the service of the complaint, and did not respond to the Notice to Show Cause, it has not

established "'good cause'" under Section 102.20 of the Board's Rules and Regulations for failure to answer the complaint. Thus, the allegations of the complaint are deemed to be admitted to be true and are so found by the Board. Accordingly, we grant the General Counsel's Motion for Summary Judgment. On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Greater Kansas City Roofing is, and at all times material herein has been, engaged in the nonretail sale and installation of roofing materials at a facility located at 1725 Southwest Boulevard, Kansas City, Kansas. Respondent, in the course and conduct of its business operations within the State of Kansas, annually purchases goods and services valued in excess of \$50,000 directly from sources located outside the State of Kansas. Respondent, in the course and conduct of its business operations within the State of Kansas, annually sells goods and services valued in excess of \$50,000 directly to customers located outside the State of Kansas. Respondent, in the course and conduct of its business operations within the State of Kansas, annually sells goods and services in excess of \$50,000 to customers located within the State of Kansas who, in turn, satisfy the Board's direct jurisdictional standards.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

United Union of Roofers, Waterproofers, and Allied Workers Local No. 20, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

On or about 2 September 1982, Respondent failed and refused, and continues to fail and refuse, to check off dues and initiation fees and remit them to the Union, and make payments to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan, pursuant to the collective-bargaining agreement between the parties. By such acts and conduct, Respondent has unilaterally changed or modified the terms and conditions of employment of its employees. Accordingly, based on the above, we find that Respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action as set forth below designed to effectuate the purposes and policies of the Act.

We find that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally failing and refusing to check off dues and authorization fees and remitting them to the Union, and by failing and refusing to make payments to

the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan, as required by the collective-bargaining agreement entered into between the parties. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to check off dues and initiation fees and remit them to the Union, with interest, and to make whole its employees by paying to the aforesaid plans and program the contributions which should have been made pursuant to the collective-bargaining agreement, retroactive to on or about 2 September 1982.²

Conclusions of Law

1. Greater Kansas City Roofing, Kansas City, Kansas, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen and apprentice flat, slat, and tile roofers, damp proofers, and waterproofers, employed by Respondent in Leavenworth, Wyandotte, Johnson, Miami, Linn, Anderson, Franklin, Douglas and Jefferson counties in Kansas, and Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Henry, Hickory, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, St. Clair, Saline, and Vernon counties in Missouri, but excluding all office clerical employees,

² Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent, Greater Kansas City Roofing, must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to the provisions in the documents governing the funds at issue, and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Company, 240 NLRB 1213 (1979).

professional employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since on or about 25 September 1981, the above-named labor organization has been and now is the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act.

5. By unilaterally failing and refusing since on or about 2 September 1982, and at all times thereafter to check off dues and initiation fees and remit them to the Union, and by failing and refusing to make payments to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan, pursuant to the collective-bargaining agreement between the parties, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Greater Kansas City Roofing, Kansas City, Kansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL--CIO, by unilaterally failing and refusing to check off dues and initiation fees and remitting them to the Union, pursuant to the collective-bargaining agreement between the parties.

(b) Refusing to bargain collectively with the Union by unilaterally failing and refusing to make payments to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan, pursuant to the collective-bargaining agreement between the parties.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL--CIO. The appropriate unit for the purpose of collective bargaining is:

All journeymen and apprentice flat, slat, and tile roofers, damp proofers, and waterproofers, employed by Respondent in Leavenworth, Wayandotte, Johnson, Miami, Linn, Anderson, Franklin, Douglas and Jefferson counties in Kansas, and Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Henry, Hickory, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, St. Clair, Saline, and Vernon counties in Missouri, but excluding all office clerical employees, professional employees, guards and supervisor as defined in the Act, and all other employees.

(b) Check off dues and initiation fees and remit them to the Union pursuant to the collective-bargaining agreement between the parties together with interest.

(c) Make whole its employees by making payments to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan pursuant to the collective-bargaining agreement between the parties in the manner set forth in the section of this Decision entitled ''The Remedy''; and, if applicable, by reimbursing any of its employees for any medical or other expenditures incurred by them by reason of any discontinued or delinquent payment to such funds.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary or useful in checking compliance with this Order.

(e) Post at its Kansas City, Kansas, place of business copies of the attached notice marked ''Appendix.''³ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. 2 December 1983

Donald L. Dotson, Chairman

Robert P. Hunter, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL--CIO, by unilaterally failing and refusing to check off dues and initiation fees and remitting them to the Union, pursuant to the collective-bargaining agreement between us and the Union.

WE WILL NOT refuse to bargain collectively with the Union by unilaterally failing and refusing to make payments to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan pursuant to the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with United Union of Roofers, Waterproofers and Allied Workers Local No. 20, AFL--CIO. The appropriate unit for the purpose of collective bargaining is:

All journeymen and apprentice flat, slat, and tile roofers, damp proofers, and waterproofers, employed by Respondent in Leavenworth, Wayandotte, Johnson, Miami, Linn, Anderson, Franklin, Douglas and Jefferson counties in Kansas, and Bates, Benton, Carroll, Cass, Cedar, Clay, Chariton, Henry, Hickory, Jackson, Johnson, Lafayette, Pettis, Platte, Ray, St. Clair, Saline, and Vernon counties in Missouri, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL honor the checkoff provision and the valid dues-checkoff authorizations filed with us, and remit to the Union dues we should have checked off pursuant to the collective-bargaining agreement between us and the Union, with interest.

WE WILL make whole the unit employees by making contributions to the health and welfare plan, pension plan, apprenticeship training program, and vacation-savings plan pursuant to the collective-bargaining agreement between us and the Union, retroactive to on or about 2 September 1982.

WE WILL make whole the unit employees, if applicable, by reimbursing any of our employees for any medical or other expenditures incurred by them by reason of any discontinued or delinquent payment to said funds.

GREATER KANSAS CITY ROOFING

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Tower II Building, Gateway Center, Fourth at State, Kansas City, Missouri 66101, Telephone 913--236--3866.